

No. **2022-7371**

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 7/8/2022

Subject Considered:

Arch Indemnity Insurance Company
300 Plaza Three
Jersey City, New Jersey 07311-1107

Consent Order
DWC Enforcement File Nos. 28712 & 29043

General remarks and official action taken:

This is a consent order with Arch Indemnity Insurance Company (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code §§ 801.051-801.053 and is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 28712

3. Respondent was required to pay Temporary Income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 10 days late.
4. Respondent was required to pay Temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was three days late.

Failure to Timely Comply with a Final Contested Case Hearing Decision and Order

File No. 29043

5. On [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED].
6. The CCH D&O became final on [REDACTED]. Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED].
7. Respondent issued payments for benefits plus accrued interest on [REDACTED] which was 31 days late.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):

- the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

7. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.

9. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(20), and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.

Failure to Timely Comply with a Final Contested Case Hearing Decision and Order

10. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
11. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
12. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.002(a)(22), 415.0035(e), and 415.021 by failing to timely comply with a DWC order for benefits.

Order

It is ordered that Arch Indemnity Insurance Company must pay an administrative penalty of \$19,000 within 30 days from the date of this order. Arch Indemnity Insurance Company must pay the administrative penalty by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
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Approved Form and Content:



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